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HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 996th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 July 1990, at 10 a.m.

Chairman: Mr. LALLAH

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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GE.90-16743/2462B

The meeting was called to order at 10.45 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

General comment on article 23 of the Covenant (CCPR/C/39/CRP.2 and Rev.1) (continued)

1. The CHAIRMAN invited members of the Committee to continue their consideration of the draft general comment on article 23 of the Covenant which they had begun at the 988th meeting.

2. Mr. POCAR (Chairman-Rapporteur of the Working Group under article 40) said that there were two texts before the Committee: the recommendation by the Working Group with the symbol CCPR/C/39/CRP.2, which had been discussed at the 988th meeting, and a revised text of paragraphs 1 to 5 ("Future CCPR/C/39/CRP.2/Rev.1") taking account of the amendments adopted at the 988th meeting. The latter text reflected the state of the discussion on paragraphs 1 to 5, but further changes could still be made. The Committee might first of all review the revised text of paragraphs 1 to 5, making any comments or changes it wished, and then go on to consider paragraph 6 of document CCPR/C/39/CRP.2.

Paragraph 1 (document CCPR/C/39/CRP.2/Rev.1)

3. No comments were made on paragraph 1.

Paragraph 2 (document CCPR/C/39/CRP.2/Rev.1)

4. Mrs. HIGGINS proposed a drafting change to the fourth sentence of the paragraph, since the expression "as appropriate" was confusing. The sentence could read: "Where diverse concepts ... State, this should be indicated with an explanation of the degree of protection afforded to each".

5. In the last sentence of that paragraph, the Committee referred to unmarried couples and their children but made no mention of the one-parent family. That omission could easily be corrected by inserting a reference to single parents in the second phrase so that the text would read: "such as unmarried couples or single parents and their children".

6. Mr. NDIAYE proposed that for stylistic reasons the word "famille" should be repeated in the fourth sentence of the French text, which would then read: "... une pluralité de notions de famille 'nucléaire' et de famille 'élargie' ...".

7. The CHAIRMAN said that, if there were no objections, he would take it that the Committee wished to make those drafting changes.

8. It was so decided.

Paragraph 3 (document CCPR/C/39/CRP.2/Rev.1)

9. No comments were made on paragraph 3.

Paragraph 4 (document CCPR/C/39/CRP.2/Rev.1)

10. The CHAIRMAN, noting that he had not taken part in the first discussion on the draft general comment, said that he failed to see the logical link between the various elements of the second part of the fifth sentence in paragraph 4, beginning with the words "thus, for instance". He did not see the need to compel a State to provide "in all cases" for civil marriage in order to guarantee the right to freedom of thought, conscience and religion.

11. Mrs. HIGGINS proposed that, in order to take into account the comment just made, the second part of the fifth sentence should be amended to read: "thus, for instance, the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility both of religious marriage and civil marriage".

12. Mr. NDIAYE agreed with that proposal, provided that reference was made to religious marriages in the plural.

13. Mr. MYULLERSON said that, in some countries, as for example in the Soviet Union, people had the right to contract a religious marriage but were required to obtain confirmation of that marriage by the civil authorities. He wondered whether the wording proposed by Mrs. Higgins took that situation into account.

14. Mr. NDIAYE said that he understood Mr. Myullerson's concern, because the practice to which he had referred existed in many other countries. Still, the problem that should most concern the Committee in the instant case was that of safeguarding the expression of free consent to marriage. Once a State had made provision for the celebration of religious marriages and civil marriage also existed within that State, the hierarchy among those forms of marriage was of little importance. He failed to see the point of lengthening the text to explain that civil marriage affirmed religious marriage or that the latter had no value in the eyes of the State. It was only important that provision should be made for religious marriages.

15. Mrs. HIGGINS said that Mr. Myullerson's comment raised a question which should be distinguished from whether the State should provide for the possibility of religious marriages and civil marriage. She therefore proposed that, after the fifth sentence reworded according to her proposal on civil marriage and religious marriage, a sentence should be added to read: "For a State to require that a religious marriage also be conducted or affirmed under the civil law is not a violation of the right to freedom of conscience and religion").

16. Mr. ANDO said that the wording proposed by Mrs. Higgins met his personal concern and also seemed to respond to that of Mr. Myullerson. In Japan, the State required neither a religious nor a civil ceremony for a marriage to be recognized, only its registration.

17. The CHAIRMAN said that in his country, Mauritius, where many religions coexisted, the practice of religious marriages had been a serious contributory factor to social instability, because men would marry in a religious ceremony and then abandon their wives and children. In 1989, the Government had decided to introduce legislation to ensure that persons who contracted a religious marriage enjoyed the guarantees provided for in a civil marriage.

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Individuals were therefore free to marry according to the religious rites of their choice but the priest or officiating minister was also a licensed registrar, and drew up the documents required for the registration of a marriage. The text proposed by Mrs. Higgins covered that possibility but could well create other problems in terms of practical application.

18. Mr. WENNERGREN referred to the second part of the fourth sentence of paragraph 4 of the revised text, where mention was made of "full personal consent in a form prescribed by law". In fact "form" signified a simple "yes" or "no". However, as a rule legislation laid down other conditions, and those should be specified in the text. Consequently, he proposed that the second part of the fourth sentence and the first part of the fifth sentence should be amended to read: ("... free and full personal consent in a form and under conditions prescribed by law. In this connection, ... that such legal provisions must be fully compatible with, etc."). The second part of the fifth sentence should be amended in the manner proposed by Mrs. Higgins.

19. Mr. NDIAYE said that, while he did not object to Mrs. Higgins' proposal, it covered one particular situation whereas there were many situations. In some countries, a religious marriage had the same weight as a civil marriage, as in Senegal, for example, where the Muslim marriage was celebrated and registered at the mosque. There were also States which simply did not have religious marriage and still others where civil marriage affirmed religious marriage. He failed to understand why the Committee should choose to refer to one situation rather than to another.

20. Mr. COORAY said that in his country, Sri Lanka, Christians were very attached to the religious marriage ceremony and the Catholic custom, for example, was that after celebrating the church marriage, the priest would go to the presbytery with the couple and the witnesses and record the marriage in the civil register. Consequently, the marriage was celebrated according to religious requirements and simply registered according to the provisions of civil law. He proposed that the words "or registered" should be inserted after the expression "conducted or affirmed under the civil law" in the new sentence proposed by Mrs. Higgins.

21. Mr. PRADO VALLEJO said that the question was a sensitive one in view of the diversity of forms of celebration of marriage. For example, there were two neighbouring countries in Latin America where practice differed greatly. In Ecuador, before the revolution of the early twentieth century, only religious marriage had existed; the officiating priest had issued a certificate and the religious marriage had had the validity of a civil marriage. After the revolution, the civil and religious marriages had been combined and the Church no longer had the right to marry two persons in a religious ceremony, unless they presented a civil marriage certificate.

22. In Colombia also, only religious marriage had existed previously, with full validity under civil law. Today, there was civil marriage and religious marriage with the difference that a couple wishing to retain the option of divorce chose a civil marriage whereas a couple who opted for a religious marriage thereby relinquished the possibility of divorce. The two forms of marriage therefore had completely different effects.

23. Mrs. HIGGINS said that the wording of the sentence she was proposing to add did not imply the imposition of any requirement on States. It merely indicated that a State which required a parallel or previous civil marriage, such as Ecuador, or registration of marriage like Sri Lanka, or any other form of affirmation of a religious marriage, did not violate another principle of the Covenant. In order to take Mr. Cooray's objection into account she proposed to include the idea of registration by drafting the sentence to read: "... that a religious marriage also be conducted, affirmed or registered ...".

24. Mr. AGUILAR URBINA fully endorsed that proposal.

25. Mr. WENNERGREN proposed that, for the sake of coherence, the sentence should begin with the word "However".

26. Mr. NDIAYE pointed out that the sentence as currently worded seemed to be expressing a general consideration whereas it was really expressing an opinion of the Committee. He therefore proposed that the sentence should begin with the words: "However, in the Committee's view, ...".

27. The CHAIRMAN said that in the new sentence he would like the expression "religious marriage" to be replaced by another expression, which, though longer, had the advantage of avoiding certain connotations, namely "a marriage which is celebrated in accordance with religious rites".

28. The amendments proposed by Mr. Wennergren, Mr. Ndiaye and the Chairman were adopted.

29. Paragraph 4, as orally amended, was adopted.

Paragraph 5 (document CCPR/C/39/CRP.2/Rev.1)

30. Mr. POCAR (Chairman-Rapporteur of the Working Group) recalled that the Committee had to decide whether it wished to keep the examples given in the second sentence of paragraph 5 or whether it preferred to end the sentence after the words "either discriminatory or compulsory". It also had to decide whether to delete the phrase "particularly when their members are separated for political or economic reasons", from the last sentence of the paragraph, while keeping the examples.

31. Mr. AGUILAR URBINA expressed the view that the Committee should avoid including too many details or examples in the text. If it gave forced abortion as an example, it should also refer to the prohibition of abortion. The same was true of the obligation not to have more than a specified number of children, because some countries were pursuing a policy of encouraging births and parents were pressured to have the largest possible number of children. It would therefore be enough to say that family planning policies should be compatible with the provisions of that Covenant and should not be either discriminatory or compulsory.

32. Mr. DIMITRIJEVIC agreed that the Committee should be very careful when quoting examples, especially in the case of family planning policies, because depending on the country, tendencies could be diametrically opposed. For instance, there were countries which might penalize couples who had no children or too few children. Some leaders objected violently to abortion,

whereas others had equally radical positions in support of it. It was therefore preferable to stick to a general formulation without giving any examples. He also wondered whether the English adjective "compulsory" was sufficiently forceful to cover practices impairing the physical integrity of individuals; the French and Spanish versions referred to "coercive" policies. He would like to hear the opinion of other members of the Committee on the subject.

33. With regard to the last sentence, he thought that it would be better to avoid quoting the two examples given, because there were countries where members of the same family were separated without being either migrant workers or refugees. In China, for instance, most households were separated because of the way in which jobs were allocated. The Committee should, of course, encourage international co-operation to ensure family reunification, but it should not forget that its general comments were addressed mainly to States which, to begin with, should be urged to avoid any practices that might lead to the separation of families within their borders. The Committee could refrain from quoting the examples of migrant workers and refugees and speak perhaps of "political, economic or administrative reasons".

34. Ms. CHANET said she was firmly convinced that, in th second sentence, the Committee should avoid giving any examples if it was not prepared to mention all aspects of the question, including a ban on abortion and authoritarian measures to force couples to have large families. Furthermore, the phrase "and should not be either discriminatory or compulsory" was redundant in the context, because discriminatory or compulsory measures were necessarily incompatible with the Covenant. She would, moreover, prefer the term "contraignantes" to "coercitives".

35. With regard to the last sentence, she also thought that reference should not be confined to migrant workers and refugees but should include cases of separation within the same State. If the Committee deleted the examples, it should amend the sentence to read: "both at the internal level and, as the case may be, in co-operation with other States, ...".

36. Mr. WENNERGREN thought that it was preferable to omit any mention of compulsory policies. The second sentence would therefore begin: "When States adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory ...". He added that the examples of forced sterilization and forced abortion given in the second part of the sentence referred to measures that the Committee considered to be incompatible with articles 7 and 9 of the Covenant.

37. Mr. NDIAYE agreed with Ms. Chanet. In South Africa, for instance, in order to reduce the birth rate of the black population, workers had been forbidden to visit their wives for 10 or 11 months out of 12. Families were, therefore, sometimes separated within the same country and the second sentence should be formulated to take that fact into account.

38. Mr. POCAR (Chairman-Rapporteur of the Working Group) said that Mr. Wennergren's proposal to delete the word "compulsory" could be justified because the adjective was really superfluous: in fact discriminatory or compulsory measures were incompatible with the provisions of the Covenant, and earlier in the paragraph it was stated that family planning policies should be compatible with those provisions. On the other hand, he felt that the concept

of non-discrimination should be retained, because it was an important aspect of the protection provided for in the Covenant. If he had understood correctly, Ms. Chanet on the one hand preferred the term "contraignantes" to "coercitives" and Mr. Dimitrijevic on the other hand wondered whether the English adjective "compulsory" was sufficiently strong. Mr. Wennergren's proposal to delete the word "compulsory" had the obvious advantage of reconciling those two positions.

39. With respect to the last sentence of the paragraph, he could agree to delete the reference to migrant workers and refugees, because it was true that families were not always separated only by borders between countries. The working group had in fact had that in mind when it had chosen to refer to the two types of separation - separation within States and separation on either side of international borders - and to propose the following wording: "the possibility to live together implies the adoption of appropriate measures, both at the internal level and in co-operation with other States, ...".

40. Mr. AGUILAR URBINA said that, as he understood it, Mr. Wennergren was proposing that some of the examples given in the second sentence should be kept, whereas the majority of the members would rather delete them completely. Mr. Wennergren suggested, for example, that the reference to forced abortion should be retained. It was a fact that in some countries there were fanatical anti-abortion groups and any mention of that example in the paragraph might be construed as lending them support.

41. Furthermore, he was in favour of including a reference both to "discrimination" and to "coercion". He agreed with Mr. Dimitrijevic that the English word "compulsory" was not strong enough and that the adjectives used in the French and Spanish versions were more suitable. It was important to assert that the policies adopted should not be coercive because the idea of coercion implied violence, which was incompatible with the provisions of the Covenant.

42. The CHAIRMAN, summing up the discussion on the second sentence, said that there seemed to be general agreement on the need to point out that the measures adopted by States should not be discriminatory. On the other hand, there were some members who felt that the word "compulsory" (or "coercive") should be deleted. He also gathered that the Committee as a whole supported deletion of the last part of the sentence, which gave a number of examples. In his view, the reference to "compulsory" (or "coercive") could be kept, because the very concept of a family planning policy could sometimes imply the idea of constraint and in recent years large democracies like India had adopted compulsory family planning measures. If the Committee decided to keep the reference in the sentence it would still have to decide on whether the word "compulsory" or "coercive" was to be used in the English version. He thought that the word "compulsory" was perhaps more appropriate.

43. Mr. AGUILAR URBINA invited the Committee to opt for the literal translation of the word used in the original French version of the text, namely, "coercive".

44. Ms. CHANET said that, without entering into any legal niceties, she wished to draw the Committee's attention to a semantic point: the word "coercitives" ("coercive") implied the use of physical force, whereas the word "contraignantes" indicated a binding legal obligation. Consequently, if the

Committee referred to measures which were neither discriminatory nor coercive, that was tantamount to saying that it could, if need be, accept the fact that those provisions were binding. Consequently, she felt it would be preferable to state explicitly that the policies should not be compulsory in the latter sense.

45. The CHAIRMAN noted that the members of the Committee seemed to be in agreement to use the term "contraignantes" in the French version and to keep the term "compulsory" in the English text.

46. Mr. PRADO VALLEJO said that it would be wise to avoid giving any examples of the measures to be prohibited. With respect to the last sentence of the paragraph, he proposed that reasons of State security should be added to the political and economic reasons mentioned, because in some countries State security was sometimes invoked to prevent family reunification.

47. Mr. WENNERGREN said he had difficulty in agreeing to keep the word "compulsory" because there was nothing in the Covenant to justify its use: there was no provision in the Covenant actually prohibiting the adoption of compulsory family planning measures and States were free to implement the policies in that area which they saw fit, provided of course that they did not violate the provisions of the Covenant in the process. If forced sterilization and forced abortion were measures which were clearly contrary to articles 7 and 9 of the Covenant, the same could not be said of other measures: how, for example, could prohibiting couples from having more than a certain number of children be said to be incompatible with the Covenant? In short, the Committee should exercise the greatest caution in dealing with that question. The Committee would be well advised to adhere to the positions adopted by other United Nations bodies (the General Assembly, various committees dealing with family matters, family planning policy, etc.) in that area.

48. Mr. COORAY said he could agree to keep the term "compulsory" and to delete the examples. He had no objection to Mr. Prado Vallejo's proposal that the concept of "reasons of State security" should be added, but he felt that those reasons were part and parcel of the political reasons, already referred to in the passage in question. Lastly, he also considered that it would be preferable to delete the words "as in the case of migrant workers and refugees" because, as had already been said, families could be separated within the same State and for a host of reasons.

49. Mrs. HIGGINS said that Mr. Wennergren's remarks left her completely perplexed because, in her opinion, it was precisely article 23, paragraph 2, of the Covenant that was breached in cases where a State prohibited its nationals from procreating or set, for example, a "ceiling" of 1.4 children per family. Policies of that kind constituted an obvious violation of the provisions of the Covenant and she was therefore in favour of keeping the term "compulsory". Nor did she agree with Mr. Wennergren that the positions of the Committee should be brought into line with those of other United Nations bodies on that subject. In her opinion, the members of the Committee had a responsibility to interpret the provisions of the Covenant to the best of their ability, regardless of the positions adopted by some other body. Lastly, with regard to the final sentence of the paragraph, she preferred the word "unity" to "reunification" because reunification usually suggested only families separated by borders between States.

50. Mr. POCAR (Chairman-Rapporteur of the Working Group) agreed with Mrs. Higgins and said that she had expressed exactly what the Working Group had had in mind in drafting the second sentence of the paragraph. The Group had thought it important to specify that family planning policies should, on the one hand, be compatible with the provisions of the Covenant and, on the other, be neither discriminatory nor compulsory.

51. With respect to the last sentence of the paragraph, he accepted the word "unity" but if the expression "both at the internal level and, as the case may be, in co-operation with other States" was adopted, the international dimension of the following proposal should not be overlooked; the last sentence of the paragraph could read: "Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and, as the case may be, in co-operation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political or economic reasons".

52. Mr. ANDO agreed with Mr. Pocar. He added that, while the prohibition on the use of force was provided for in article 7 of the Covenant, he none the less shared Mrs. Higgins' concern over possible violations of article 23, paragraph 2, of the Covenant and in his opinion, it was important to keep the word "compulsory" in the second sentence. He also agreed with the use of the word "unity". Concerning the reasons for the separation of families, he found the reference to only political or economic reasons too restrictive, and proposed the following wording: "particularly when their members are separated for political, economic or other reasons".

53. The CHAIRMAN, speaking in a personal capacity, suggested that the last sentence of the paragraph should read: "Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and, as the case may be, in co-operation with other States, to ensure the unity or reunification of families". In his proposal, there was no mention of the reasons for which a family could be separated because there were many of them and it might make the text unwieldy to list all of them.

54. Mr. WENNERGREN pointed out that the right "to found a family" recognized in article 23, paragraph 2, of the Covenant did not necessarily entail the right to procreate freely. The Committee should, therefore, be extremely cautious in that area and draw for example on the conclusions reached by other United Nations bodies on the right to procreate and the means to be used in applying family planning policies.

55. The CHAIRMAN, for his part, felt that the first sentence of paragraph 5 of the text under consideration did not constitute a restrictive interpretation of article 23, paragraph 2, of the Covenant and that it was obvious - as indicated at the beginning of the second sentence - that in order to respect the Covenant, the policies applied by Governments should in no way be compulsory. He gathered, furthermore, that members of the Committee wished to delete entirely the second part of the second sentence of paragraph 5.

56. Concerning the last sentence, it had been proposed to insert the phrase "as the case may be" after or before the expression "in co-operation with other States"; furthermore, he gathered that the majority of the Committee members were of the opinion that the second part of the sentence, beginning with the words "particularly when their members ..." should be deleted.

57. Mr. DIMITRIJEVIC said he would join the consensus, but would like account to be taken of the wide variety of reasons for which members of the same family might be separated - including their desire to live apart. The last phrase should therefore read: "particularly when their members are separated for political, economic or similar reasons".

58. Mr. POCAR supported Mr. Dimitrijevic's proposal.

59. The CHAIRMAN said that, if there were no objections, he would take it that the Committee wished to adopt the text of paragraph 5 of its general comment, as orally amended.

60. It was so decided.

Paragraph 6 (document CCPR/C/39/CRP.2)

61. Mr. POCAR (Chairman-Rapporteur of the Working Group) referring to paragraph 6 of document CCPR/C/39/CRP.2, said that the Working Group had made some changes to the draft which had preceded that in document CCPR/C/39/CRP.2. In particular, reference was made in the new text to the following points: acquisition of the nationality of the spouse by the foreign spouse, the right of married women to retain the use of their family name, and the choice of residence of the spouses. Furthermore, in the last subparagraph of paragraph 6, the Working Group, after a thorough discussion, had decided to add a reference to legal separation, because it had felt that the most serious problems, namely those which mainly affected children, were virtually the same in the case of separation as in the case of divorce.

62. With regard to the concept of the family, he drew members' attention to the decision taken by the Committee on communication No. 201/1985 (document CCPR/C/33/D/201/1985, para. 10.3) and proposed that the Committee should use that decision as the basis for improving the text of its general comment. Admittedly, several members of the Committee had had individual opinions on that decision, which meant that it would perhaps be difficult to reach a consensus on the subject, but he wished to refer to that earlier initiative.

63. Mrs. HIGGINS considered that the formulation of individual opinions with respect to the decision mentioned by Mr. Pocar did not create a problem as far as the concept of the family was concerned, because the members of the Committee had been unanimous on the subject.

64. She noted that article 23, paragraph 4, of the Covenant dealt firstly with the equality of the spouses in marriage and secondly, with the protection of the children. Paragraph 6 of the Working Group's recommendation, however, referred only to the concept of non-discrimination and not to that of equality of the spouses; that was likely to create difficulties, for example, when the man was obliged to pay alimony to the wife, even though she might be more solvent than her ex-husband. She therefore felt that if the Committee adopted paragraph 6 of the Working Group's recommendation it would not really have dealt appropriately with all the practical questions concerning the equality of spouses.

65. Mr. ANDO, referring to the passage which read "the right of married women to retain the use of their family name should be safeguarded", emphasized that the relevant customs could vary considerably from country to country. He

thought that it would be preferable, in order to allow States the necessary freedom of choice, to add a phrase which could read: "taking into account the various legal provisions of the State party concerned".

66. Mr. DIMITRIJEVIC proposed that, in order to meet Mrs. Higgins' concerns, paragraph 6 should be divided into two parts, one dealing with equality between the spouses and the other with the situation of children. Moreover, as Mr. Pocar had suggested, the Committee would do well to base itself on its views concerning communication No. 201/1985 in order to define the concept of the "family" in its general comment.

67. With respect to Mr. Ando's suggestion concerning the right of the spouses to use their own family name, it would perhaps be preferable to say "the right of spouses freely to choose their family name should be safeguarded", in order to allow both spouses freedom of choice on an equal basis.

68. Ms. CHANET agreed that it was important to distinguish between the situation of the spouses and that of the children. Moreover, she fully shared Mrs. Higgins' opinion that it was vital to avoid confusion between the concept of non-discrimination and the principle of equality embodied in article 23, paragraph 4, of the Covenant. States parties should therefore be asked to state clearly what measures they had taken not so much to avoid discrimination as to ensure full respect for the principle of the equality of the spouses.

69. Mr. POCAR noted that the question of the distinction between the principle of equality and that of non-discrimination had arisen time and again in the Committee and that the Committee had not been able to arrive at a definite position on that point. With regard to the family name, he acknowledged that the question did not concern women alone and thought that the choice of a family name should be jointly decided on by both spouses. He supported the proposals of Mr. Ando and Mr. Dimitrijevic.

70. The CHAIRMAN said that a new version of paragraph 6 of the Committee's general comment on article 23 of the Covenant could be drafted, taking into account all the suggestions made at the current meeting and that the Committee would resume consideration of the matter at its next meeting.

The meeting rose at 12.55 p.m.

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Thirty-ninth session

SUMMARY RECORD OF THE 997th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 July 1990, at 3 p.m.

Chairman: Mr. LALLAH

CONTENTS

Submission of reports by States parties under article 40 of the Covenant

Organizational and other matters (continued)

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The meeting was called to order at 3.30 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3)

1. The CHAIRMAN said that the Bureau had considered new deadlines for the submission of the next periodic reports of Zaire and of Viet Nam, because those originally set had been exceeded. It suggested that those reports should be submitted by 31 July 1991.

2. It was so decided.

3. The CHAIRMAN said that the reports of the following States parties (listed in the order in which they had been received) were pending consideration by the Committee: Spain, India, Canada, Finland, Sweden, United Kingdom of Great Britain and Northern Ireland, Jordan, Ukrainian Soviet Socialist Republic, Morocco, Sri Lanka, Ecuador, Byelorussian Soviet Socialist Republic and Madagascar. Taking account both of the dates on which the reports had been received and of the periods which they covered, the Bureau recommended that the Committee, at its fortieth session, should take up the reports of Spain (third periodic), India (second periodic), Canada (second and third periodic), Finland (third periodic), Morocco (second periodic) and Sri Lanka (second periodic). The third periodic report of Sweden and the third periodic report of the Ukrainian Soviet Socialist Republic would be kept in reserve at that session.

4. The Ambassador of Jordan had requested that consideration of his country's second periodic report should be postponed. The third periodic report of Ecuador and the third periodic report of the Byelorussian Soviet Socialist Republic were still in translation. The third periodic report of the United Kingdom of Great Britain and Northern Ireland, which for the first time covered the totality of the territories for which the Government was responsible, might be taken up at the Committee's session in March 1991.

5. Mrs. KLEIN (Secretary of the Committee), replying to a question by Ms. CHANET, recalled that the second periodic report of Jordan had been held in reserve for consideration at the current session. The Ambassador had, however, informed the Secretariat that in view of the many changes under way, particularly with respect to the country's Penal Code, it would be appreciated if extra time could be allowed to update the report.

6. The CHAIRMAN suggested that consideration of the report of Jordan might be scheduled for March 1991, on the understanding that the additional material should be submitted sufficiently in advance for processing, and that the Committee should approve the Bureau's recommendations.

7. It was so decided.

8. The CHAIRMAN said that a number of requests concerning postponement or the submission of new reports had been received. He asked the Secretary of the Committee to provide details.

9. Mrs. KLEIN (Secretary of the Committee) said that the Permanent Mission of the German Democratic Republic had requested that consideration of that

country's third periodic report should be deferred, and had announced that a new report would be submitted in due course.

10. By a note verbale dated 3 May 1990, the Permanent Mission of Hungary, had transmitted the wish of the Government that the deadline of 2 August 1990 for the submission of Hungary's third periodic report should be extended for a further year, in view of the important legislative changes taking place in that country.

11. A note verbale from the Permanent Mission of Romania, dated 2 July 1990, contained a similar request.

12. The Bureau, after considering the requests, had recommended that notes should be sent to the countries concerned, stating that in accordance with similar previous situations, the Committee believed that, particularly at a time of legislative changes, it would be useful if their representatives could come before it to explain the changes proposed, so that the Committee, in an exchange of views and dialogue, might be helpful in that process.

13. The Permanent Mission of the Czech and Slovak Federal Republic had informed the Secretariat that the Government wished to submit a new third periodic report, replacing that prepared before the changes of 1989; it could probably be submitted by the end of the current year, and the Government would welcome its consideration at the Committee's forty-second session.

14. In a note verbale dated 5 July 1990, Panama had requested deferral of consideration of its second periodic report, since the new Government did not wish to defend that submitted by its predecessor and intended to submit additional information, which it would like the Committee to examine at its forty-first session. The Bureau had felt in that case that the note should be acknowledged, but that Panama should at the same time be requested to submit the additional information as soon as possible and certainly by the end of October 1990 at the latest, so that the report could be taken up at the spring 1991 session of the Committee.

15. Madagascar had submitted what it termed a consolidated second and third periodic report, covering the years 1978-1989. The Bureau was of the opinion that, notwithstanding the length of the period covered, that submission should be regarded as the second periodic report. The Committee, having considered it, might then determine a further, relatively short period, to be covered by a third periodic report, which need not necessarily be a very long one.

16. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to endorse the Bureau's recommendations.

17. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Venue of the Committee's meetings

18. The CHAIRMAN said that he had consulted the Bureau on the substance of a reply to a letter addressed to the Committee, through the Under-Secretary-General for Human Rights, by the Chairman of the Committee on Conferences.

19. The Bureau recommended that, in conformity with its decision on a similar occasion the previous year, the Committee should authorize the Chairman to reply to that letter, explaining that the calendar of the Human Rights Committee for 1990 and 1991 had been finalized in 1989, and that in the meantime the Committee had been informed of the resolution adopted by the General Assembly containing certain recommendations concerning the fixing of meetings. He would go on to state that the Committee had given consideration to that issue, adding that for the reasons he had made known by letter to the Chairman of the Fifth Committee, the venues decided upon for 1991 remained unchanged. He would further indicate that, bearing in mind the recommendations of the General Assembly, the Committee had taken measures to ensure that its work was performed without loss of effectiveness through new measures involving, inter alia, the appointment of a Special Rapporteur on new communications and the delegation of authority to the Working Group on Communications to take decisions on admissibility. He would, in addition, intimate to the Chairman of the Committee on Conferences the view that actual savings - in practical terms - would be so small as not to justify any prejudice to the effectiveness of the Committee's work.

20. If there was no objection, he would take it that the Committee endorse those recommendations.

21. It was so decided.

Review of the conclusions and recommendations contained in the study on possible long-term approaches to the supervision of existing and new instruments on human rights (A/44/668) of relevance to the activities of Committee

22. At the invitation of the CHAIRMAN, Mr. POCAR, speaking as Chairman/Rapporteur of the Working Group under article 40, introduced the Group's report on its preliminary review of the study prepared by an independent expert (Professor Alston) appointed by the Secretary-General in accordance with resolution 43/115 of the General Assembly and resolution 1989/47 of the Commission on Human Rights.

23. He recalled that by its resolution 44/135, the General Assembly had decided, inter alia, to revert, at its forty-fifth session, to the consideration of Professor Alston's study on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments "in the light of the deliberations of the Commission on Human Rights and those of the meeting of persons chairing treaty bodies". Furthermore, in its resolution 1990/25, the Commission on Human Rights, at its forty-sixth session, had decided, inter alia, to invite "the treaty bodies to review the study on possible long-term approaches, to consider which conclusions and recommendations [are] of relevance to their respective spheres of competence and to send their comments to the Secretary-General".

24. It would further be recalled that the study had been presented to the Human Rights Committee at its thirty-eighth session but not discussed; and that the Committee had requested the Working Group that was to meet prior to its thirty-ninth session to review the conclusions and recommendations contained in the study and to set its comments and suggestions before the Committee at its thirty-ninth session.

25. With the Committee's permission, he would thus present the findings of the Working Group concerning the successive paragraphs of the summary of conclusions and recommendations of the study, which were before the Committee in an extract from document A/44/668.

Paragraph 1

26. Mr. POCAR said that the Working Group had no specific comments, but generally endorsed the premises of the study.

Paragraph 2

27. Mr. POCAR said that the Working Group agreed that reporting procedures were of central importance to the international human rights régime. At the same time, it deemed it opportune to draw attention to the vital importance of the domestic procedures used in preparing reports. In particular, it was important to involve in the process of preparing reports, to the maximum extent possible, the relevant components of civil society, including non-governmental groups. Members of the Working Group had felt that the reporting exercise was indeed all the more useful when Governments involved as many interested parties as possible, both in the preparation of and in the follow-up to reports.

28. Mrs. HIGGINS evoked what she believed to be an inherent danger in recommending such involvement. It was incumbent on non-governmental organizations, in particular, to distance themselves somewhat from government; they might feel compromised in addressing the Human Rights Committee with their concerns if they had participated in the preparation of reports. She would prefer the Committee to express the view that it was important in the process of preparing a report to take the opportunity of notifying as many sections of the community as possible of its preparation, so that they might begin their own, rather separate work.

29. The CHAIRMAN observed that it was for States, having acceded to the Covenant, to submit reports. It was, of course, important that all interested parties should be made aware of that process; but to attempt to advise States on the manner of preparing reports might be deemed to constitute interference in their sovereignty. If there was no objection, he would take it that the Committee endorsed the view expressed by Mrs. Higgins.

30. It was so decided.

Paragraph 3

31. Mr. POCAR said that the Working Group agreed on the desirability of reducing or rationalizing the number and scope of non-treaty-based requests for reporting.

Paragraph 4

32. Mr. POCAR said that the Working Group, bearing in mind the Committee's own excellent experience in that regard, supported the suggestion to grant a degree of discretion as to the periodicity of reporting to monitoring bodies

to be established under future treaties. But while the use of such discretionary power might help to ease the burden on States by extending the periodicity of reporting, the Working Group considered that periodicity should under no circumstances extend beyond five years.

33. The CHAIRMAN, supported by Mr. COORAY, demurred at the somewhat self-congratulatory description of the Committee's experience as "excellent", preferring it to be qualified as rich and of long standing.

Paragraphs 5 and 6

34. Mr. POCAR said that the delicate issue of overlapping reporting requirements had been considered in the past by the Committee. The Working Group's primary concern had been to stress that simple cross-referencing would not adequately meet the needs of the treaty bodies. However, the meeting of chairpersons in October 1990 should be requested to prepare some guidance for States parties as to the type of cross-referencing that might be appropriate and acceptable, and to submit relevant suggestions to the treaty bodies for consideration. For that purpose, the report of the Secretary-General showing the extent of overlapping of issues should be resubmitted to the meeting of chairpersons and sent to the States parties.

35. The Working Group wished it to be stressed that the problem should be addressed by providing all possible assistance to States parties in preparing reports, at the national, subregional or regional levels; and that the United Nations advisory services and technical assistance programme should take the issue into account when preparing training courses and working groups in some countries.

36. In addition, the Working Group recalled the consolidated guidelines for the initial part of State party reports, as well as the manual being prepared by UNITAR in collaboration with the Centre for Human Rights. Urging that the manual should be published and made available as soon as possible, the Group would further suggest that in future, it might be used by the Advisory Services Section, when it organized training courses, as a form of textbook. The issue was a delicate one, but it could not be denied that the format of training courses was perhaps not always as suitable as it might be; the Working Group felt that it might be more useful to orient those courses more strongly towards the obligation of States to report to treaty bodies.

37. Mr. MYULLERSON stressed that it would be very inconvenient for the Committee to have only a short report with references to various other reports on subjects such as genocide or torture, because the Committee was a body dealing with civil and political rights in general. It was not necessary for States parties to include such cross-references in their reports; in some special cases they could refer to other reports, but they had to give the necessary information to the Committee under all articles of the Covenant.

38. Mr. POCAR said he believed there was a broad consensus on the Working Group's comment that simple cross-referencing would not adequately meet the needs of the treaty bodies. The issue was whether the Committee should ask the meeting of chairpersons to consider what kind of cross-referencing might be allowed. Instead of requesting the meeting of chairpersons to prepare guidelines for States parties in that respect, the Committee might ask for certain recommendations to be resubmitted to the treaty bodies.

39. The CHAIRMAN said that the suggestion to refer the matter back to the treaty bodies was a useful one. It was not for the Committee to make definite recommendations except to say that the meeting of chairpersons should consider the matter and make recommendations to the various treaty bodies for further study.

40. Mr. MYULLERSON agreed, especially since the Chairman, when representing the Committee, would express the Committee's concern that simple cross-referencing was not enough.

Paragraph 7

41. Mr. POCAR said that paragraph 7 did not contain any suggestions that were relevant to the Committee.

Paragraphs 8-14

42. Mr. POCAR said that those paragraphs had been taken together because they contained a thorough consideration of the problem of finance. The main issue was whether the treaty bodies should be financed through the regular budget of the United Nations or through specific contributions by States parties to a particular instrument. The Working Group strongly supported the view of the independent expert that the activities of the treaty bodies should always be financed through the regular budget of the United Nations.

Paragraph 15

43. Mr. POCAR said that the Working Group had no comment to make on paragraph 15, dealing with the meeting time available to each treaty body, since the issue was not immediately relevant for the Committee.

Paragraph 16

44. Mr. POCAR said that the paragraph referred both to honoraria for Committee members and to Secretariat staffing levels. The Working Group had thought it inopportune to refer to the problem of honoraria directly, but it had addressed the question of Secretariat staffing levels as well as the problem of financial resources to support the activities of the treaty bodies. It had stated clearly that "Secretariat staffing levels as well as financial resources to support the activities of the treaty bodies are grossly inadequate, particularly in comparison with the level of support available to other international institutions, and must be increased if the treaty bodies are to be able to cope successfully with their growing work-loads". It noted that, despite the crucial importance of human rights, the human rights sector was receiving less than 1 per cent of the regular budget of the United Nations. The Working Group suggested that the meeting of chairpersons should emphasize the need to revise budgetary allocations for the sector.

45. Mrs. HIGGINS agreed with the thrust of the Working Group's comments but had suggestions for redrafting on several points. First, the Working Group had made a comparison with "other international institutions", but the Committee was not such an institution; comparison could be made instead with the level of support available for other activities for which funds from international institutions were required. Secondly, the points might

be made that funds were already inadequate to support the Committee's current activities and that they would certainly be even more inadequate to cope with an increase in the work-load. Finally, she thought it was a good idea to emphasize that less than 1 per cent of the United Nations' regular budget was spent on human rights.

46. The CHAIRMAN said that the relevant redrafting would be left to Mr. Pocar.

Paragraphs 17 and 18

47. Mr. POCAR said that the Working Group had supported the recommendations in paragraphs 17 and 18 of the expert's study because they took account of the practice already followed by the Human Rights Committee, inter alia in preparing lists of issues for delegations.

48. The CHAIRMAN pointed out that paragraph 17 simply referred to "the practice of providing the representative of a State party in advance with a list of principal issues". The practice which the Committee had followed to date was to make the list available several days ahead of time. However, there was a possibility that States parties might request the list further in advance, which would be undesirable for the Committee; it would destroy the freshness of the dialogue if lists were provided too far ahead of time and States had months to prepare their answers. Instead of saying "in advance" it might be better to use the expression "shortly before consideration of the report".

Paragraph 19

49. Mr. POCAR said that the Working Group considered that the Human Rights Committee's practice of recording observations by members at the conclusion of the consideration of a State party report had been highly useful both to the Committee and to the States parties and would accordingly recommend the practice to other treaty bodies. As far he knew, the Committee on Economic, Social and Cultural Rights had initiated the same practice, but other bodies had not.

50. The CHAIRMAN said that the Committee's practice had been a good one and had made extremely effective use of the time available. However, he had a further small advance to propose which had been suggested to him by representatives of New Zealand, whose report had been considered the previous year. Those representatives had told him that the experience had been useful, but that they had had nothing concrete to show their political masters except their own report on the Committee's comments. That situation might pose problems because the representatives of some States parties might be selective in what they told their Government. The Committee's practice might therefore be made more effective if, at the end of the session, the substance of members' observations and the Chairman's concluding remarks, to be summarized by a designated member of the Committee, were adopted and sent to the States parties in the form of a written document.

51. Ms. CHANET said that the procedure just suggested by the Chairman had been adopted by the Committee against Torture.

52. Mr. COORAY wondered whether time constraints would make it possible to formulate such a document. To entrust a member with the task of preparing a common statement would be a difficult undertaking because further discussion would be needed among members to work out an agreed statement.

53. Mr. WENNERGREN agreed with Mr. Cooray that it might be difficult to prepare such a statement; however, the publication of summary records could be speeded up, since delegations needed them rapidly.

54. Following a discussion between Mrs. HIGGINS, the CHAIRMAN and Mr. DIMITRIJEVIC, Ms. CHANET said that, to take account of possible changes in the Committee's procedure, the comment on paragraph 19 should indicate that the Working Group considered that the Committee's practice of recording observations by members had been highly useful and should be adopted in one form or another, leaving open the question of whether to follow the present system or to adhere to some other system such as that set up by the Committee against Torture.

55. The CHAIRMAN said that the Working Group's comment on paragraph 19 was adopted on the understanding that it might later be amended in the light of the Committee's subsequent discussions on the matter.

Paragraphs 20 and 21

56. Mr. POCAR said that the Working Group considered that the maximization of normative consistency in respect of human rights standards was clearly desirable; however, owing to the existing staff constraints, progress in that respect could only be envisaged over the longer term as increased Secretariat staff resources were made available.

Paragraph 22

57. Mr. POCAR said that, among the measures that might be taken to promote greater awareness of the work of the treaty bodies, the Working Group agreed that it would be helpful if the annual reports of the treaty bodies could be synthesized from time to time and made available in more readable form for distribution to the general public.

58. Mrs. HIGGINS said that, in his study, Mr. Alston seemed to suggest that the existing format of reports should be reviewed. She thought that the current format of the Committee's report was good and should not be replaced. However, in addition, a synthesized version might appear from time to time.

59. The CHAIRMAN observed that the report was intended primarily to serve as a document for the General Assembly.

60. Mr. POCAR agreed with Mrs. Higgins that the draft should make it clear that the Committee agreed with the idea of having a report for general public distribution but in addition to and not in place of its current report to the General Assembly.

61. Mr. PRADO VALLEJO said that it was not just a matter of changing format and presentation to make reports more readable. They must also be made accessible to the public. In his country, for instance, the United Nations Office had no copies of human rights reports.

62. Mr. POCAR said that account must be taken of Mr. Prado Vallejo's point. The study did refer to improving the activities of United Nations information offices.

63. The CHAIRMAN said that he took Mr. Pocar would draft an amendment to paragraph 22 along the lines suggested by Mrs. Higgins.

Paragraphs 23-27

64. Mr. POCAR said that the paragraphs did not directly concern the Committee.

Paragraph 28

65. Mr. POCAR said that the Working Group, while appreciating the concerns voiced in paragraph 168 of the study, was of the view that "preference should not necessarily be given in the future to non-binding instruments over binding instruments provided, however, that whenever possible the supervisory or monitoring functions established under new human rights treaties are assigned to the appropriate existing treaty bodies". He observed that the Working Group had considered that it was a proliferation of treaty bodies rather than a proliferation of treaties in themselves which was harmful and that therefore supervisory functions should be assigned to existing bodies in order to make savings. The Working Group had also discussed the possibility of attaching protocols to existing treaties rather than drafting new instruments, a step which would be useful in maximizing consistency of standards.

66. Mrs. HIGGINS said that the word "the" before "appropriate existing treaty bodies" might be deleted in order to give the draft more flexibility.

67. Mr. DIMITRIJEVIC agreed with Mr. Pocar's observations and supported Mrs. Higgins' amendment. He observed that there was inertia in the formulation of instruments, which were always modelled on existing ones. Perhaps a more inventive approach might be successful and could lead to consolidation of existing treaty bodies. However, the matter required thorough discussion.

68. Mr. PRADO VALLEJO thought that the text recommended by the Working Group was not strong enough. Universal declarations were merely exhortatory: what was important was that States should enter into binding commitments. On the other hand, there was no reason why existing treaty bodies should not be given additional functions.

69. Mr. COORAY agreed with Mr. Prado Vallejo's observations. When the Universal Declaration of Human Rights had been adopted in 1948 there had been considerable opposition to what some States had regarded as interference in their internal affairs. Since then great progress had been made and States had come to accept monitoring. It would be dangerous to take a step backward. The international community should aim at creating more binding standards.

70. Mr. POCAR agreed with the preceding speakers and suggested that the draft should be strengthened by deleting the word "necessarily".

71. The CHAIRMAN observed that a second optional protocol had now been added to the Covenant. He wished that the Committee had been consulted before being given additional functions. The suggested amendments would be incorporated in the Working Group's draft comment on paragraph 28.

Paragraph 29

72. Mr. POCAR said that the Working Group had no comment to propose on paragraph 29. Perhaps one general statement should be made under paragraphs 28 to 33.

73. Mrs. HIGGINS said that she would like the Committee to address the question of access to travaux préparatoires. It had been the experience of the Committee that the functions of monitoring bodies were enhanced by having those records in an accessible form, as the Committee itself now did owing to the work of a former Committee member. It was a false economy not to publish travaux préparatoires.

74. Mr. POCAR said he did not feel that the subject fitted easily into the present context. He would prefer to deal with it as a separate issue which related not only to new instruments but also to existing ones. It would be useful if the Centre for Human Rights made travaux préparatoires more accessible.

Paragraphs 30 and 31

75. Mr. POCAR read out the draft of the Working Group, which stated: "The Working Group considers that some of the existing treaty bodies would have the capacity to monitor the implementation of more than one international human rights instrument. In this connection, it would seem preferable that new instruments be adopted, as far as possible, as protocols to existing instruments".

76. Mr. FODOR said that the draft might be interpreted to mean that existing monitoring bodies were not working to full capacity. More cautious drafting might be advisable.

77. Mrs. HIGGINS suggested that a sentence should be added to the effect that appropriate administrative and financial arrangements would have to be made for discharging such additional responsibilities.

78. Mr. POCAR agreed with the proposed amendment. He also suggested that the word "capacity" should be replaced by "competence".

79. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the draft on paragraphs 30 and 31 as amended; that it wished to have the draft on paragraph 28 and the draft on paragraphs 30 and 31 consolidated into one statement under paragraphs 28-33; and that it wished to have a separate paragraph on the subject of travaux préparatoires.

80. It was so decided.

81. The CHAIRMAN said that the Committee's comments on Mr. Alston's recommendations, as amended, would be forwarded to the Commission on Human Rights and to the meeting of persons chairing human rights treaty bodies.

General comment on article 23 of the Covenant (CCPR/C/39/CRP.2) (continued)

82. The CHAIRMAN invited the Committee to resume its discussion on paragraph 6 of the general comment on article 23 of the Covenant.

83. Mr. POCAR recalled that it had been decided that paragraph 6 should be divided into two separate paragraphs, the first referring to the first part of article 23 (4) and a second additional paragraph dealing with the protection of children.

84. Mrs. HIGGINS recalled that Ms. Chanet had proposed that more stress should be laid on equality between the partners to a marriage. She wondered whether that point could be met by replacing the phrase "The principle of non-discrimination" at the beginning of the second sentence in the third paragraph by "This equality" and by replacing the reference to "In the event of legal separation" at the beginning of the fourth paragraph by a phrase reading along the lines: "Such equality continues to be applicable to arrangements regarding legal separation". She also wondered whether some specific reference should be made to the subject of maintenance. It was frequently the case that the man was required to pay alimony regardless of his former wife's income. That was an area in which men might be the victims of discrimination.

85. The CHAIRMAN, speaking in his personal capacity, observed that he had frequently ordered women to pay maintenance to their former husbands, particularly when the latter were awarded the custody of children. Such provision was in keeping with the requirements of the Covenant.

86. Mrs. HIGGINS said that perhaps a reference to alimony or maintenance might be included in the list of items in the third and fourth lines of the last paragraph.

87. Mr. ANDO supported Mrs. Higgins' proposal that a reference to alimony should be included in the paragraph under discussion.

88. The CHAIRMAN suggested that the phrase "With regard to equality as to marriage" was preferable to the expression "With regard to non-discrimination as to marriage".

89. He invited Mr. Pocar to read out the text of the paragraph as reformulated.

90. Mr. POCAR said that the text would remain unchanged up to the end of the first sentence of the second paragraph of paragraph 6. It would then continue: "Likewise, the right of each spouse to retain the use of his or her original family name or to concur on an equal basis in the choice of the new family name should be safeguarded. During marriage the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets.

Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage. Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, maintenance or alimony, child custody, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection".

91. The CHAIRMAN said he found the phrase "acquisition of the nationality of the spouse by the foreign spouse and the children" cumbersome and unclear. The phrase would need redrafting.

92. Ms. CHANET said she had some difficulties with the last paragraph of the proposed text. It did not seem appropriate to include child custody and visiting rights in the context of discriminatory treatment that was to be prohibited, since in fact in the case of the dissolution of a marriage, protection of children was in effect a justified form of discriminatory treatment. As she recalled, the Committee had reached a decision to that effect in one case, and the text should therefore be in conformity with that decision.

93. Mr. AGUILAR said that after consultation with Mr. Prado Vallejo he wished to suggest some amendments to the Spanish text of the paragraph. In the sentence on acquisition of the nationality of the spouse, the text should read "... en lo que respecta a la adquisición de la misma nacionalidad del cónyuge por el cónyuge extranjero". The next sentence should begin: "Asimismo, debe salvaguardarse ... etc.". In the last paragraph, the phrase "parental authority" should be rendered as "patria potestad" instead of "autoridad parental".

94. Mrs. HIGGINS suggested that the sentence on acquisition of nationality of the spouse should be rephrased to read: "... no sex-based discrimination should occur in respect of the acquisition of nationality upon marriage. A wife should not be compelled to acquire the nationality of her husband."

95. The CHAIRMAN suggested that the phrase: "Each spouse should be entitled to acquire the nationality of the other, but will not be compelled to do so" would be preferable.

96. Mr. AGUILAR supported that suggestion.

97. Mr. PRADO VALLEJO also supported it. He drew attention to the existence in many countries of the form of sex-based discrimination whereby a person employed in the diplomatic service was compelled to marry a spouse of his own nationality at the risk of being dismissed from his post. Perhaps the Committee should include a reference to the right to nationality in the context of such practices.

98. Ms. CHANET said the right to nationality was extremely complex. The Committee should not try to cover all possible cases of discrimination in that connection, because if it were to omit any, it would place itself in a difficult situation. The formulation used should be a generalized one.

99. On the other hand, the comment should not be confined to noting that there should be no discrimination with regard to acquisition of nationality: loss of nationality should also be included. It would therefore be preferable to say: "... no sex-based discrimination should occur in respect of the acquisition or loss of the nationality of the spouse ...".

100. Mr. POCAR said he was not sure whether in fact the Covenant provided for the right of one spouse to acquire the nationality of the other. In the context of the protection of the family, it was clearly preferable that the two spouses should be entitled to have the same nationality, but the concept of rights in such a connection was perhaps not appropriate.

101. Mr. NDIAYE shared that view. The wording proposed by Ms. Chanet was more neutral, and more flexible. The introduction of the concept of the right of one spouse to acquire the nationality of the other would in effect compel States parties to accept the principle of dual nationality, to which many of them were in fact opposed.

102. The CHAIRMAN noted that the phrase "and the children" had been omitted from the text as now proposed.

103. Mr. DIMITRIJEVIC suggested a reference to "acquisition of the nationality of the spouse by any member of the family".

104. The CHAIRMAN pointed out that there was no need to refer to children in the context of sex-based discrimination. The problem of the children was a different one, and was covered not by article 23 but by article 24.

105. Mrs. HIGGINS proposed that the phrase "upon marriage" should be added after the phrase "acquisition or loss of nationality" to make clear that it was not acquisition of nationality in general that was being provided for.

106. Mr. NDIAYE wondered whether perhaps the wording agreed might be going too far, in view of the need to take into account the very widespread practice of marriages of convenience entered into fleetingly by persons who wished to take on the nationality of a spouse for purely economic reasons.

107. Mrs. HIGGINS pointed out that there had been extensive litigation before the European Court of Human Rights on the subject of legislation involving sex-based discrimination. The States parties concerned had claimed that discriminatory legislation was necessary, precisely in order to prevent abuses in the form of marriages of convenience. However, it had been held that such sex-based discrimination was nevertheless unacceptable, and that States would have to find ways other than discriminatory legislation for establishing whether marriages were or were not marriages of convenience.

108. The CHAIRMAN agreed. It was important not to diminish the right concerned completely in an effort to prevent all possible abuses. The text should be retained as it stood.

109. Paragraph 6, as amended, was adopted.

110. The draft general comment as a whole, as amended, was adopted.

The meeting rose at 6 p.m.